



November 29, 1999

Ms. Elizabeth Dierdorf  
Assistant City Attorney  
Office of the City Attorney  
100 Throckmorton Street  
Fort Worth, Texas 76102

OR99-3408

Dear Ms. Dierdorf:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129664.

The City of Fort Worth (the "city") received a written request for the personnel file of a named deputy marshal. You contend that certain information contained in the personnel file that pertains to the deputy marshal's polygraph examination is made confidential under section 19A of article 4413(29cc) of Vernon's Texas Civil Statutes, and thus must be withheld from the requestor pursuant to section 552.101 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 19A of article 4413(29cc), which governs the release of polygraph examinations, provides in pertinent part:

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<sup>1</sup>You state that the remainder of the personnel file will be made available to the requestor, who is the deputy marshal's representative. Because you do not argue that any other information contained in the requested personnel file is excepted from required public disclosure, we assume the city has made that information available to the requestor.

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person . . . or governmental agency that requested the examination;

(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Consequently, the city is barred from releasing to anyone information obtained during and the results of the polygraph examination except as specifically provided by section 19A of article 4413(29cc). The city must also withhold the list of questions asked during the examination. Open Records Decision No. 430 (1985). The mere fact that an individual has agreed to submit to a polygraph examination, however, is not confidential under the statute. We conclude that the city must withhold Attachments B and G in their entirety and the information you have highlighted in Attachment E. We have also identified one other sentence contained in Attachment E, which we have marked, that the city must withhold pursuant to article 4413(29cc). The city must release, however, Attachments C, D, and F in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/RWP/jc

Ref.: ID# 129664

Encl.: Submitted documents

cc: Mr. Michael Ware  
111 North Houston, Suite 210  
Fort Worth, Texas 76102  
(w/o enclosures)